

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY BELGRADE

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E.O. 11652: N/A

TAGS:EIND, YO

SUBJECT: NEW YUGOSLAV LAW ON MARKETING OF DRUGS

REFS: A) STATE 62316; B) 0ELGRADE 1771

1. DEPARTMENT HAS AGAIN BEEN CONTACTED BY NORMAN ST. LANDAU, PATENT COUNSEL OF JOHNSON AND JOHNSON. LANDAU IS MEMBER OF DEPARTMENT'S ADVISORY COMMITTEE ON INTERNATIONAL INTELLECTUAL PROPERTY AND IS SPOKESMAN FOR VARIOUS TRADE GROUPS ON INDUSTRIAL PROPERTY MATTERS. LANDAU AND OTHERS ARE HIGHLY CONCERNED BY NEW YUGOSLAV LAW DESCRIBED REFTELS. ACCORDING TO INFORMATION THEY HAVE RECEIVED FROM EUROPEAN PHARMACEUTICAL FIRMS AND FROM YUGOSLAV ATTORNEYS, MEANING OF ARTICLE 27(5) OF NEW LAW DIFFERS FROM THAT DESCRIBED IN REF B.

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2. ACCORDING TO LANDAU THE YUGOSLAV REGISTRAR OF PHARMACEUTICALS WILL NOT APPROVE THE MARKETING OF A NEW DRUG UNTIL THE APPLICANT PROVES THAT THE TRADEMARK HAS BEEN ASSIGNED PERMANENTLY TO THE YUGOSLAV MANUFACTURER. SUCH PERMANENT ASSIGNMENT WOULD MEAN THAT EVEN IF THE YUGOSLAV COMPANY DECIDED TO DROP THE AMERICAN PHARMACEUTICAL, THE

TRADEMARK OWNERSHIP WOULD STILL PERMANENTLY REMAIN WITH THE YUGOSLAV ENTITY.

3. IF LANDAU'S INFORMATION IS CORRECT, THEN THE NEW LAW COULD HAVE SERIOUS NEGATIVE EFFECTS ON FOREIGN DRUG COMPANIES. FOR EXAMPLE, IN THE CASE DESCRIBED ABOVE IF A YUGOSLAV FIRM STOPPED MARKETING A US-MADE DRUG BUT RETAINED ALL THE TRADEMARK RIGHTS, IT COULD THEN KEEP THE US FIRM FROM LICENSING THE TRADEMARK TO ANOTHER YUGOSLAV ENTITY OR FROM DIRECTLY MARKETING UNDER THE TRADEMARK. SUCH A SITUATION COULD IMPAIR US TRADE PROSPECTS IN PHARMACEUTICAL FIELD.

4. OTHER POSSIBLE ADVERSE CONSEQUENCES OF REQUIRING FIRMS TO TRANSFER OWNERSHIP OF TRADEMARKS INCLUDE LOSS OF SUB-LICENSING RIGHTS AND LOSS OF ADEQUATE LEVERAGE TO CONTINUE TO ENFORCE HIGH QUALITY STANDARDS ON LICENSEE. WHILE THESE FACTORS ARE OF PARAMOUNT IMPORTANCE TO THE TRADEMARK OWNER, THEY ARE ALSO IMPORTANT FOR YUGOSLAV CONSUMERS. LOW QUALITY DRUGS CAN HAVE SERIOUS NEGATIVE IMPACT ON PHARMACEUTICAL USERS; SUB-LICENSING TO UNQUALIFIED MANUFACTURER COULD ALSO RESULT IN MANUFACTURE OF INFERIOR QUALITY PRODUCT WHICH WOULD STILL BEAR TRADEMARK OF SUPERIOR PRODUCT, THUS LEADING TO CONSUMER DECEPTION.

5. LANDAU PLANNING TO VISIT BELGRADE WEEK OF JUNE 20 TO INVESTIGATE SITUATION. HE WOULD LIKE TO MEET WITH EMBASSY OFFICERS TO DISCUSS PROBLEM AND WOULD LIKE EMBASSY ASSISTANCE IN ARRANGING APPOINTMENTS IN YUGOSLAV MINISTRY LIMITED OFFICIAL USE

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OF HEALTH, ESPECIALLY WITH THE REGISTRAR OF PHARMACEUTICALS. IF APPROPRIATE, HE WOULD WELCOME BEING ACCOMPANIED BY EMBASSY OFFICER ON KEY CALLS.

6. FYI. LANDAU HAS INDICATED THAT HE BELIEVES ARTICLE 27 (5) OF NEW LAW VIOLATES PRINCIPLE OF "NATIONAL TREATMENT" CONTAINED IN THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY TO WHICH YUGOSLAVIA, THE US AND SOME 80 OTHER COUNTRIES ARE PARTY. STATE, COMMERCE AND PATENT OFFICE HAVE EXAMINED THIS QUESTION CAREFULLY. ON THE BASIS OF INFORMATION CURRENTLY AVAILABLE, WE DO NOT, REPEAT NOT, AGREE WITH LANDAU'S INTERPRETATION. WE SEE NOTHING IN ARTICLE 27(5) WHICH SINGLES OUT FOREIGN FIRMS OR INDIVIDUALS FOR DISCRIMINATORY TREATMENT. IN FACT, IT APPEARS THAT PROVISIONS OF ARTICLE 27(5) APPLY EQUALLY TO ALL TRADEMARK OWNERS. THEREFORE WE HAVE URGED LANDAU NOT TO MAKE ISSUE OF PARIS CONVENTION REQUIREMENTS. IF EMBASSY LEARNS OF INFORMATION TO THE CONTRARY, I.E., THAT NEW LAW PLACES RESTRICTIONS ON FOREIGN TRADEMARK RIGHTS

WHICH DO NOT APPLY TO YUGOSLAV-OWNED TRADEMARKS, PLEASE
REPORT. END FYI.

7. ACTION REQUESTED: EMBASSY REQUESTED TO ADVISE IF WEEK

OF JUNE 20 CONVENIENT TIME FOR LANDAU VISIT AND WHETHER
EMBASSY CAN ASSIST AS INDICATED PARA 5 ABOVE. CHRISTOPHER

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